UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

PROPPANT SPECIALISTS, LLC)	
and)	Case 30-CA-082116
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 139,)	
AFL-CIO)	

RESPONDENT'S RESPONSE TO THE BOARD'S NOTICE TO SHOW CAUSE AND RESPONSE TO COUNSEL FOR ACTING GENERAL COUNSEL'S MOTION FOR SUMMARY JUDGMENT

FTS International Proppants, LLC (incorrectly named as Proppant Specialists, LLC, hereinafter "Proppant"), by its attorneys, Jackson Lewis LLP, responds to the Board's Notice to Show Cause and to Counsel For Acting General Counsel's Motion for Summary Judgment as follows:

Proppant has no obligation under Section 8(a)(5) of the National Labor Relations Act ("NLRA") to bargain with or furnish information to a union that has been certified improperly. *E.g. Beloit Corp., Castings Div. v. NLRB*, 857 F.2d 1154, 129 L.R.R.M. (BNA) 2437, 2442 (7th Cir. 1988). The certification of the Local 139 on April 19, 2011 was invalid because the ruling in 30-RC-6783 finding Barrett Oliver was not a supervisor does not comport with the law and evidence presented in the underlying proceedings and thus the Certification of the Election should be reversed. Further, this proceeding is barred, in whole or in part, because the Board lacks a quorum. Specifically, under the NLRA all authority is vested in the Board, and while others may act on the Board's behalf by statute or delegation, the Board lacks a quorum because the President's recess appointments are constitutionally invalid. Therefore, the Board's agents or delegates lack authority to act on behalf of the Board, as a quorum does not exist in fact and in-law. Proppant reserves the right to challenge the authority of the Board and its agents or

delegates if they continue to act in the absence of a lawfully constituted quorum.

July 26, 2012

Respectfully submitted,

FTS INTERNATIONAL PROPPANTS, LLC

By: /s/ Gregory H. Andrews
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on July 26, 2012, he caused a copy of the foregoing RESPONDENT FTS INTERNATIONAL PROPPANTS, LLC's RESPONSE TO THE BOARD'S NOTICE TO SHOW CAUSE AND RESPONSE TO COUNSEL FOR ACTING GENERAL COUNSEL'S MOTION FOR SUMMARY JUDGMENT to be electronically filed according to NLRB E-Filing System protocols, and caused a copy to be served, via U.S. mail, postage prepaid, on the following:

Executive Secretary, Lester Heltzer National Labor Relations Board 1099 1410 Street Nw Washington, DC 20570 FEDERAL EXPRESS OVERNIGHT

Pasquale A. Fioretto, Esq. Attorney For IUOE Local No. 139, AFL-CIO Baum, Sigman, Auerbach & Neuman Ltd 200 West Adams Street, Suite 2200 Chicago, Il 60606 **CERTIFIED MAIL**

Andrew Gollin. Esq. Counsel for Acting General Counsel National Labor Relations Board, Region 30 310 West Wisconsin Avenue, Suite 700 Milwaukee, WI 53203 **REGULAR MAIL**

s/ Gregory H. Andrews

Gregory H. Andrews